

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

TERRENCE A. McARTHUR,

Petitioner,

v.

Case No. 2:20-cv-00204

SHELBY SEARLS, Superintendent,
Huttonsville Correctional Center,

Respondent.

MEMORANDUM OPINION AND ORDER

The court having received the Proposed Findings and Recommendation of United States Magistrate Judge Cheryl A. Eifert, entered on October 15, 2020 (ECF No. 20); and the magistrate judge having recommended that the court grant the respondent's motion to dismiss,¹ filed July 13, 2020 (ECF No. 14), deny without prejudice the petitioner's 28 U.S.C. § 2254 petition (ECF No. 2) based on his failure to exhaust available state remedies, and dismiss the action and remove it from the docket; and no objection having been filed to the Proposed

¹ In his petition, the petitioner named the State of West Virginia as the respondent. See ECF No. 2. In the motion to dismiss, Shelby Searls represented that he is the correctly named respondent, see ECF No. 14; ECF No. 15, and by a July 14, 2020 order, the Magistrate Judge directed that Mr. Searls be substituted for the State of West Virginia, see ECF No. 16.

Findings and Recommendation,² it is ORDERED that the findings made in the Proposed Findings and Recommendation of the Magistrate Judge be, and they hereby are, adopted by the court and incorporated herein.


It is, accordingly, ORDERED that:

1. the respondent's motion to dismiss (ECF No. 14) be, and hereby it is, granted;
2. the petitioner's § 2254 petition (ECF No. 2) be, and hereby it is, denied without prejudice; and
3. this is action is dismissed, and the Clerk is directed to remove it from the court's docket.

² In a letter-form motion filed August 14, 2020, the petitioner notified the court that his address had changed. See ECF No. 17. In an August 17, 2020 order denying the letter-form motion, the Magistrate Judge directed the petitioner to respond to the respondent's motion to dismiss by October 14, 2020. See ECF No. 18. A copy of the order was sent to the petitioner's new address but was returned as undeliverable and unable to be forwarded. See ECF No. 19. Likewise, the copy of the Proposed Findings and Recommendation sent to that address was returned as undeliverable and unable to be forwarded. See ECF No. 21. The court notes that the Magistrate Judge advised the petitioner of his duty to promptly notify the Clerk of any changes in his address. See ECF No. 5; ECF No. 7; see also LR Civ P 83.5 ("A pro se party must advise the clerk promptly of any changes in name, address, and telephone number.").

The Clerk is directed to forward copies of this memorandum opinion and order to all counsel of record, any unrepresented party, and the United States Magistrate Judge.

ENTER: November 9, 2020



John T. Copenhaver, Jr.
Senior United States District Judge